

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, : Case No. 1:20-cr-00142-1
Plaintiff, :
- v - : **Jury Trial, Day 7**
ALEXANDER SITTENFELD, a/k/a : Wednesday, June 29, 2022
"P.G. Sittenfeld," :
Defendant. : 9:00 a.m.
: :
: Cincinnati, Ohio

EXCERPTED PROCEEDINGS - TESTIMONY OF LAURA BRUNNER

BEFORE THE HONORABLE DOUGLAS R. COLE, DISTRICT JUDGE

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* * *

PROCEDINGS

(In open court at 11:39 a.m.)

* * *

4 THE COURT: Does the government intend to call
5 another witness?

6 MS. GAFFNEY PAINTER: Yes, Your Honor. The
7 government will call Laura Brunner.

8 THE COURT: Very good.

9 (Government witness, LAURA BRUNNER, sworn.)

10 MS. GAFFNEY PAINTER: May I proceed, Your Honor?

11 THE COURT: You may, Ms. Gaffney Painter.

12 DIRECT EXAMINATION

13 BY MS. GAFFNEY PAINTER:

14 Q. Ms. Brunner, will you please state and spell your name
15 for the record.

16 A. Laura Brunner, L-a-u-r-a, B-r-u-n-n-e-r.

17 Q. Ms. Brunner, where do you work?

18 A. At the Port of Greater Cincinnati Development Authority,
19 otherwise known as the port.

20 Q. What is the port?

21 A. We are a quasi-governmental economic development
22 organization, so we are created under the Ohio Revised Code as
23 a Port Authority, and we have broad economic development
24 powers. There are about -- probably about 60 port authorities
25 in the State of Ohio. Ours was created jointly by the City of

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1 Cincinnati and Hamilton County.

2 Q. Now, you mentioned the word "quasi-governmental." What
3 do you mean by that?

4 A. So authorities -- if you think of something like a
5 housing authority or transportation authority, authorities are
6 meant to be separate and independent from the government, from
7 either a state or local government, but they're formed by
8 governments to execute on behalf of the public good similarly
9 to government.

10 Q. What is your title at the port?

11 A. I'm the president and CEO.

12 Q. Is that an elected position?

13 A. No.

14 Q. How did you get that position?

15 A. I applied for the job almost a little more than ten and a
16 half years ago.

17 Q. Prior to working at the port, what did you do?

18 A. Most recently, I was the executive vice president at
19 Al Neyer, which is a commercial real estate development firm.

20 Q. What is your educational background?

21 A. I have an undergraduate degree in accounting from Indiana
22 University.

23 Q. Now, generally speaking, what are your responsibilities
24 as the port's president and chief executive officer?

25 A. Well, it starts with setting a strategy, deciding what

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1 our organization is going to do. We have very broad powers,
2 so we have the opportunity to use those in different ways.

3 We have specifically gotten into the real estate business
4 since I took over ten and a half years ago. There are other
5 port authorities that run ports, like in Cleveland and Toledo,
6 they actually have ports on the lake.

7 Other port authorities manage bus systems. Some of them
8 manage airports, and some of them -- probably the vast
9 majority in the State of Ohio are focused just on public
10 finance but, years ago, we decided to focus on real estate
11 revitalization.

12 So my primary job is to set the strategy, and then to
13 hire the people, manage the people to do the work, report to
14 the board.

15 Q. You mentioned a board. What is the board?

16 A. So in a quasi-governmental and an authority like ours, as
17 I mentioned, the city and the county have established our
18 organization, and they each appoint five members to the board.

19 So I report directly to a board, specifically to the
20 chairman of the board. There are five appointments, like,
21 certified by the county, and they each have four-year terms.

22 Q. Who appoints the members of the board?

23 A. The mayor makes the recommendation to city council, who
24 votes on the members there being appointed by the city. And
25 then for -- the county commissioner president makes

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1 recommendation to the other two county commissioners for their
2 election as well.

3 Q. What is the mission of the port?

4 A. So we are focused on what we call broken real estate. In
5 our county, we have hundreds, probably thousands of acres of
6 property that is being underutilized, and that's for a variety
7 of reasons.

8 It could be that there's contamination on the property.

9 It could be that it's vacant and blighted, been abandoned by a
10 previous owner. It could be that there are tax liens on it
11 that make it unattractive for the private sector.

12 So we're in the process of taking title to real estate
13 that is in bad condition, for a number of different reasons,
14 and returning it to productive use so that it returns back to
15 the tax rolls.

16 And while we're doing that, we're focused in a couple of
17 different ways. We are focused on bringing back residents
18 into the city and the county, filling the neighborhoods back
19 up with people living in the vacant homes, and we're focused
20 in neighborhood business districts to revitalize those that
21 have had many buildings that have been empty for a long time.

22 And then we also are focused on -- within our industrial
23 strategy, we are focused on taking old, sometimes abandoned,
24 very often just underutilized contaminant real estate and
25 getting it all cleaned up so we can attract new manufacturing

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1 companies here with really good jobs.

2 Q. You used the expression, when you just spoke, "tax
3 rolls." What is that?

4 A. So different jurisdictions, whether it's the city or a
5 village or the county, rely on different kinds of revenue to
6 support the services that they provide to the citizens.

7 Specifically, in the City of Cincinnati, income tax is a
8 very significant part of the tax of the revenue of the city,
9 so having more people live here and pay income tax, or people
10 working in the city at a manufacturing company pay income tax
11 helps the city.

12 And then also, when we have people -- when we fix up
13 property, whether it's a house or a commercial business
14 property or a manufacturing company with -- a manufacturing
15 site, when there's capital investment back in there, then
16 there's going to be property taxes paid again, which then
17 helps the county and all the jurisdictions that rely on
18 property taxes to help fund their work.

19 Q. What is the relationship of the port to the City of
20 Cincinnati?

21 A. That's -- it's complicated. So I -- as I mentioned, I
22 work directly for a board, but we've got a lot of different
23 stakeholders that we're responsible to and accountable to and
24 partner with, so the city is obviously one of our most
25 significant, I'll use the word partnerships, even though there

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1 isn't a direct line of authority from me to anybody at the
2 city.

3 The city does make, as I mentioned, appointments to my
4 board, so that's a very important part of my -- of our
5 operations, and then they provide funding.

6 When I started, the funding that the city provided, the
7 city and the county each provided to my organization, was over
8 75 percent of our operating funds.

9 But over time, over the last ten and a half years, I've
10 diversified the revenue in a number of different ways, so now
11 it's about ten percent.

12 So we're not relying on them as much for our operating
13 revenue, but we are a -- we do receive grants for our real
14 estate investments from both the city and the county as well.

15 Q. Again, generally speaking, what is the relationship of
16 the port to Cincinnati City Council?

17 A. So I would say we spend more of our time with -- my staff
18 and me with the administration than we do with the elected
19 officials.

20 We're working through planning and zoning and economic
21 development and the legal department, so we work with a lot of
22 different departments. I meet monthly with the city manager,
23 so we spend a lot of time on -- at the administration level.

24 And then I have monthly meetings. I have, over the last
25 decade, generally, monthly meetings with the mayor as to

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1 updates of what's happening there.

2 With regard to the city council, I generally have
3 quarterly meetings with city council members, updating them on
4 what's happening. That's one layer of activity.

5 I also -- we always invite all the council members to
6 ribbon cuttings and ground breakings and other forums and
7 events that we have to, you know, A, help them see what we're
8 doing; and, B, show signs of appreciation and give them
9 speaking opportunities because of the funding that they
10 provide to us.

11 I give presentations, or members of my staff give
12 presentations at council committee meetings, I would say, you
13 know, on average three times a year. And then we often make
14 presentations during budget hearings, asking -- showing
15 appreciation for previous funding and asking for continued
16 funding.

17 And then on a -- I would say other conversations with
18 council members are really on an ad hoc basis and not
19 especially frequent.

20 Q. Now, you mentioned the mayor. What is the relationship
21 of the port to the mayor, again, generally speaking?

22 A. Well, the mayor is a more important relationship than the
23 members of the council because the mayor is the one that
24 presents his budget to the council, so you really have to
25 start with having funding inside of the mayor's budget before

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1 it will go to council for approval. And the mayor is the one
2 that takes forward board appointments to the council members
3 for consideration.

4 And other than that, the -- it's really, you know, my
5 meetings with the mayor are generally update meetings, making
6 sure that there's alignment on our strategy and the areas that
7 we're focusing on, answering questions.

8 Q. Now, you mentioned earlier in your testimony that the
9 port has a number of tools available to it to foster
10 development. What are some of those tools?

11 A. So the -- all the port authorities in the State of Ohio
12 have a broad set of public finance tools. One of those is
13 that when we own real estate, we are not subject to sales tax
14 on construction materials, so we often work with private
15 developers.

16 And if you look on the auditor's website, we own, for
17 example, many buildings downtown. So the developer, the owner
18 of the real estate, will transfer title to us, and we will
19 hire them to do the work, the renovation project, or sometimes
20 a new build like the Kroger Building. And we will confer,
21 based on that, tax exemption certificates.

22 And then we require that they hold it for at least four
23 years so that they don't flip it quickly. Those are -- there
24 are other tools like that, a bond bond, we can issue TIF debt,
25 and all of those collectively are meant to encourage economic

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1 development.

2 Project -- big economic development projects, especially
3 when you get to the downtown area, have what we always call a
4 gap, that the money that the -- the equity and debt that the
5 project can support exceeds or is less than the cost there
6 would be required.

7 So often, developers will go to a number of sources,
8 whether it's getting tax credits or tax abatements, they're
9 always looking for ways to fill a gap in financing, and we are
10 one of those tools. We provide a layer.

11 And so to the extent we are saving a developer \$500,000
12 in tax, that's less money that the city, for example, would
13 have to put in if they were really motivated to encourage this
14 project to go forward.

15 Q. You mentioned TIF debt. What does that mean?

16 A. So there's something called tax increment financing that
17 is often used in real estate development and, generally
18 speaking, if you take a piece of property that's worth a
19 hundred thousand dollars right now, and you're going to put a
20 million dollars investment in it, if you put it into a tax
21 increment financing transaction, you're agreeing that the
22 valuation for property tax stays at \$100,000. So the county
23 is just going to get taxed on \$100,000, not \$1,100,000, for a
24 period of time.

25 So that saves the owner money, that difference that

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1 they're not paying in property tax, and they can use that as
2 part of their capital stock to pay for the construction costs.
3 And we will issue debt to cover that.

4 That's a -- not a, you know, very detailed explanation,
5 but it's a way to, once again, take -- nobody's writing a
6 check. It's just that people are saying we agree we'll make
7 less money for a few years on this project in order to help
8 pay for the cost of it so that it happens later, and we'll get
9 our money later.

10 Q. You mentioned the transfer of title. What are the
11 practical effects of the city transferring a property to the
12 port?

13 A. Our ownership means we take full responsibility for
14 maintenance. You know, it depends on what kind of property it
15 is; all the responsibilities of real estate ownership, you
16 know, including deciding what to do with it from that time on.

17 Q. Are you familiar with a property at 435 Elm in
18 Cincinnati?

19 A. Yes, I am.

20 Q. Now, back in the summer of 2019, what happened with
21 respect to 435 Elm and the port?

22 A. The city transferred title of that property to the port.

23 Q. Prior to the transfer of 435 Elm to the port, did you
24 have any conversations with anyone in community and economic
25 development about 435 Elm?

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1 A. Yes.

2 Q. With whom did you have those conversations?

3 A. I think the only person I spoke with about it was Phil
4 Denning.

5 Q. What did you discuss with Mr. Denning about 435 Elm prior
6 to its transfer?

7 A. He asked me if I would be willing to take control of this
8 property and manage its redevelopment going forward.

9 Q. What did you say in response to that?

10 A. I said that I would have to do some due diligence before
11 I could answer that question.

12 Q. At the time that 435 Elm was transferred to the port,
13 what was your understanding of its status?

14 A. That it was in horrible shape physically; that the
15 building itself was in horrible shape; that it would have to
16 be demolished for future development. At that time, there
17 were squatters in the building. There were two different
18 pieces of litigation that surround it.

19 It is attached to three other properties, so I knew that
20 future demolition would require the negotiation of cooperative
21 agreements with three other property owners.

22 Q. At the time that 435 Elm was transferred to the port, did
23 anyone have any ideas for redevelopment?

24 A. I -- I'm sure -- I'm sure they did.

25 Q. Were you aware of anyone who had ideas about

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1 redevelopment for 435 Elm at the time it was transferred to
2 the port?

3 A. I knew, at or around the time that it was transferred to
4 the port, that one's -- at least one developer was -- had
5 drawings done for -- with ideas for the redevelopment.

6 Q. Who was that developer?

7 A. Chinedum Ndukwe.

8 Q. After 435 Elm was transferred to the port, did you review
9 these materials from Mr. Ndukwe?

10 A. Yes.

11 Q. What was your assessment of his plan at the time you
12 first reviewed it?

13 A. Well, over the course of months, I saw many different
14 iterations of plans from him, but they were never satisfactory
15 and complete.

16 Q. Can you explain what you mean by that?

17 A. Well to -- so when we transfer any property, if I can
18 explain this, maybe. Whether we're selling a house in
19 Evanston or Avondale, or a vacant piece of ground in a
20 business district, or a big 20-acre manufacturing site, no
21 matter what real estate we own, we have a very thorough review
22 process, because we take very seriously our mission, our goal
23 to return property to its highest and best use.

24 And we want neighborhoods to have quality houses built in
25 the neighborhood. We want the community to accept what's

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1 going to be built there, so we're really very choosey. So
2 we -- in a plan that's presented to us, we have to know what
3 is going to be built there with quality design that is -- that
4 the neighborhood would approve of.

5 We have to know how much it would cost, and whether those
6 costs have been estimated by a quality contractor.

7 We have to know that the developer or the potential buyer
8 of the property has a financing in place, and we need to know
9 a timeline for the completion.

10 And depending on the use, we want to know how they reach
11 their assumptions. If you're going to tell me you're going to
12 build a hotel, I want to know how -- why you're so confident
13 that a hotel would be successful, and at what rates you could
14 charge for that hotel. So there are market studies that would
15 have to be done to help out and get that.

16 And then all of those things go into a financial pro
17 forma that gets presented to us that helps us evaluate the
18 quality of the proposal.

19 Q. And coming back to Mr. Ndukwe's proposal at this time,
20 and under those factors you evaluated, what was your initial,
21 sort of, assessment of his proposal?

22 A. I think, throughout the whole process, he had pretty
23 pictures, and he never had costs that I was confident in. He
24 never had rental rates that I was confident in, hotel rents
25 that I was -- rates that I was confident in.

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1 He never shared who a contractor would be. He never
2 shared who a hotel, if it was going to be a hotel, who that
3 flag would be. He never shared where the money was coming
4 from, either the debt or the equity. I never knew how much
5 money he was putting in.

6 And the financial pro formas that he showed me over a
7 period of months changed very dramatically.

8 Q. Did you discuss Mr. Ndukwe's plan with anyone who worked
9 at the port?

10 A. Yes.

11 Q. Who, do you recall?

12 A. Well, it would have been quite a few people. At the
13 beginning, probably Melissa Johnson, Todd Castellini, Chris
14 Rucht. I'll start with those three, at the vice president
15 level.

16 And then later Phil Denning joined the port, and he was
17 involved in conversations with them as well.

18 Q. Did you discuss Mr. Ndukwe's plan with anyone outside of
19 the port?

20 A. Well, he had -- I would have discussed it with my
21 attorneys, and then he had a host of parties that he brought
22 to multiple meetings over a period of months.

23 Q. Do you recall any of those parties that attended those
24 meetings?

25 A. Yes. Jim McGraw was the first one, John Curp at one

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1 point, Andy Brossart, Richard Hatton. He had an attorney at
2 Frost Brown named Fred. I can't remember his last name. He
3 had members of his staff that could have changed over time.
4 He had Tom Fernandez, the architect. And that's all I can
5 recall right now.

6 Q. What did you tell Mr. Ndukwe about his proposed plan for
7 435 Elm at the beginning, after you had assessed it?

8 A. That he needed -- he was missing the very first
9 fundamental piece of the puzzle, which was a qualified
10 development team.

11 I told him from the very beginning, you cannot build an
12 80 or 100 million dollar project here. You have no experience
13 here. You have to find development partners to come to the
14 table with you.

15 Q. What are development partners?

16 A. So there are -- it would be him approaching a qualified,
17 experienced development firm, either in town or bringing one
18 in from another city, that had done projects of this size in
19 an urban environment.

20 And that would have required him to negotiate what was in
21 it for him and what was in it for them, how much money was he
22 putting in, how much money were they putting in.

23 And I didn't care so much about that, what percentage
24 interest he would have. I was entirely focused on we have to
25 have -- I've got a responsibility that this building is going

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1 to be redeveloped in a quality way.

2 Whatever we build here is going to be here for another
3 hundred years. It has to be the right product and built at a
4 really high quality. And he had no experience to give me
5 confidence that he could do that himself.

6 Q. Let's turn now to Mr. Sittenfeld. Did you ever have
7 conversations with Mr. Sittenfeld about the 435 Elm project?

8 A. Yes, I did.

9 Q. If you could, there are multiple white binders in front
10 of you on the table. We're looking for the binder that has
11 tab USA 44B in it.

12 MS. GAFFNEY PAINTER: May I approach to assist the
13 witness?

14 THE COURT: You may.

15 A. I have it.

16 Q. Thank you. Ms. Brunner, we're looking at what's been
17 marked for identification as USA 44B. Do you recognize this?

18 A. Yes.

19 Q. What is it?

20 A. It is a printout of my AT&T phone bill log.

21 Q. And how do you know that?

22 A. Because I'm the one that went through the very difficult
23 task of figuring out how to print it.

24 MS. GAFFNEY PAINTER: Your Honor, the government
25 moves for the admission of Government Exhibit USA 44B.

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1 MR. C. MATTHEW RITTGERS: No objection, Your Honor.

2 THE COURT: USA 44B is admitted without objection.

3 Q. The conversations that you had with Mr. Sittenfeld about
4 435 Elm, did you have one conversation or many conversations?

5 A. Many.

6 Q. What did you and Mr. Sittenfeld discuss about 435 Elm?

7 A. Well, I think there was really just one very simple
8 theme, which was that he wanted me to enter into some kind of
9 agreement with Mr. Ndukwe, and he wanted me to do it at as
10 close to one dollar as I possibly -- wanted me to do it for a
11 dollar.

12 Q. What did Mr. Sittenfeld tell you about 435 Elm and
13 Mr. Ndukwe's proposed project?

14 A. That he felt that this was an important corner for
15 redevelopment, and he thought it was very important for our
16 city to have a black developer do the project.

17 Q. Now, you mentioned the property for a dollar. Is this
18 something that the port does or has done, provide property for
19 a single dollar?

20 A. No. In the course of ten and a half years, I think we've
21 sold 20 -- we've sold over a thousand parcels in Hamilton
22 County in the last ten and a half years, and I think we've
23 sold 22 of them or so for a dollar.

24 And those are single-family lots in the Mill Creek
25 corridor that we have sold to neighboring homeowners who are

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1 taking care of vacant land. So we set up a dollar a lot
2 program for that community, where there really was no market
3 value, and -- to help them have ownership of the property they
4 were already taking care of.

5 Q. And for those deals, where you offered the property for a
6 dollar, what were the considerations that you weighed before
7 engaging in those transactions?

8 A. That there would -- there had been no market activity in
9 those communities for a very long time, and that we could hold
10 the properties for another ten years and nobody would buy them
11 from us, so that it was -- we worked with the community in
12 the -- actually, they're the ones that approached us to ask
13 for consideration of this so that they could have more
14 ownership of their neighborhood.

15 Q. Going back to the considerations that you weigh on the
16 port before you engage in transactions, is sort of these
17 community values something that is considered when you are
18 evaluating a transaction on behalf of the port?

19 A. Very much so.

20 Q. Returning to your communications with Mr. Sittenfeld
21 about 435 Elm, what was your reaction to these communications?

22 A. I think, probably, in the first couple of times, it was
23 fine, and I just assured him, yes, I'm talking to Chin. He is
24 not in a place where I'm comfortable moving forward. I've got
25 this. You know, like, I'm on it.

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1 But then over time, they became more frequent and perhaps
2 more aggressive, and my reaction was I -- once again, I have
3 this. This is my responsibility to determine the highest and
4 best use, and I'm doing my best.

5 Q. When you say "aggressive," what do you mean?

6 A. They're just too frequent, and too long, and too direct.

7 Q. After 435 Elm was with the port, what options did you
8 consider with regards to a development deal for that property?

9 A. Well, I told Chin from the beginning -- when he came to
10 me and he had purchased a note, and he felt that that gave him
11 the rights to get this property at such a discounted price,
12 and I told him from the very beginning, I'm sorry that you
13 paid so much money for this note. It has no value. And
14 that's unfortunate for you. I will give you an opportunity to
15 make money on this project, to be a part of the development
16 team.

17 I will not start engaging with anybody else and give you
18 time to put together -- you know, to find partners and put
19 together an adequate proposal.

20 So that was one track that was going on throughout this
21 whole time frame was just basically meeting with him and
22 hoping that he would come through.

23 Meanwhile, as I mentioned, we had a lot of other things
24 to consider with the property, including getting the squatters
25 out of it, and resolving litigation with a previous -- that we

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1 inherited from the City of Cincinnati with a previous tenant.

2 And the other piece of litigation surrounding this
3 property was with Chin himself. And I tried to get him to
4 sign a waiver on that, which he refused to do, so his
5 litigation itself has stood in the way of our redevelopment so
6 far.

7 At the beginning, when he first came to me, he was going
8 to demolish the property himself, which surprised me, because
9 he does not have a demolition company. And I had explained to
10 him the bonding for a project of that size would be very
11 significant.

12 And he said that he had identified another demolition
13 contractor somewhere in the country that he was going to
14 purchase and bring to town.

15 And then even as recently as the last couple of months,
16 he's now filed -- or maybe the last month, he's now filed an
17 injunction to prevent us from the demolition of the building.

18 So the litigation with him has slowed the progress, but
19 we have continued to work on the cooperative agreements that
20 are necessary for demolition with the other three property
21 owners.

22 We have written the bid specs for demolition, as soon as
23 we're able to move forward with those, and we've applied for a
24 grant from the State of Ohio to assist us in paying for the
25 demolition.

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1 Q. When you were considering the different options for
2 435 Elm, did you consider, at any point, an RFP?

3 A. Yes, I did. I did. And I know, to your earlier
4 question, I did also met with Steve Leeper from 3CDC to ask
5 him if he'd be willing to review responsive to an RFP once I
6 got to that point, and he agreed that he would do that. So
7 that's one other person I did talk to.

8 But we were never in a position to move that far ahead
9 because no -- we would not do an RFP until we had that
10 property demolished. That is a very significant part of the
11 work that we do is the horizontal, we call it cleanup, of a
12 property to do the demolition.

13 I'm sure the building has asbestos in it. We have to do
14 remediation and demolition and in-site clearance, and then
15 you've got a nice, clean piece of property that you're more
16 likely to have success with when you do an RFP, rather than
17 sending out this lovely building in its current condition,
18 saying, hey, who the heck wants to come in and take a swipe at
19 this.

20 Q. What is an RFP?

21 A. It's a request for proposal that would be sent to
22 qualified developers, developers that had experience in this
23 size, a project in urban environments, in other cities.

24 Q. And what is the goal of an RFP?

25 A. Competition, and in getting the best ideas possible.

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1 Q. Now, during your conversations with Mr. Sittenfeld about
2 435 Elm, did you communicate that you were considering an RFP?

3 A. I do not recall that.

4 Q. While you were considering Mr. Ndukwe's proposal for
5 435 Elm, what were some of the other ideas you had to move the
6 project forward?

7 A. Well, we were focused on the physical asset and, like I
8 said, resolving litigation, getting the property -- getting
9 the squatters out, which we did, resolving the other piece of
10 litigation, which we did.

11 We emptied the building. We worked with non-profits, and
12 donated a significant amount of the personal property that was
13 in the building to non-profits, and secured the building.

14 And we spent an awful lot of time working on these
15 cooperative agreements, especially with Whex Garage, which is
16 immediately adjacent.

17 And then the garage has two skywalks, one to the Hyatt
18 Regency and one to the Convention Center, so those are the
19 other two agreements we had to have in place that would allow
20 us to demolish the skywalk when we demolished the building
21 itself.

22 So we did not spend very much time -- I probably had a
23 few people, over the course of three years, reach out to us
24 expressing interest in being the developer, but we've never
25 moved forward on putting that at the highest priority because

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1 we had to focus on litigation before we could do that.

2 Q. At any point in your conversations with Mr. Ndukwe, did
3 you discuss a ground lease?

4 A. Yes.

5 Q. What's a ground lease?

6 A. So a ground lease would allow the port -- under a ground
7 lease, the port would retain ownership of the land for the
8 future, and then lease the property aboveground for the
9 construction of a new building to a private party.

10 So they would own the building, and then pay rent for the
11 ground. That is important in places -- on properties that are
12 so significant to our city.

13 And I felt that with the Convention Center District
14 there, that it was important for the public sector. And we
15 are part of the public sector and, you know, working
16 collaboratively with the city and the county and the
17 Convention of Visitors Bureau, and now 3CDC and others,
18 that -- it's going to be a bigger group of people that, for
19 the long-term, are going to decide what we want these
20 properties around the Convention Center to look like, so
21 having ownership of that property for the long-term would be
22 important.

23 Q. What was Mr. Ndukwe's reaction to the proposal of a
24 ground lease?

25 A. Very unfavorable.

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1 Q. Did you ever discuss the possibility of a ground lease
2 for 435 Elm with Mr. Sittenfeld?

3 A. I'm sure I did, because I know, over the course of these
4 months with Chin, he at one point -- like I said, he presented
5 many different options and kind of crazy proposals.

6 And at one point, he did say, I'll pay \$66,000 a year,
7 instead of my proposed, I think, \$330,000. And so part of my
8 conversations with Mr. Sittenfeld regarded what I was going to
9 charge him and what he -- whether he deemed that to be fair.

10 Q. What was Mr. Sittenfeld's reaction to the ground lease
11 proposal; if you recall?

12 A. I don't recall specifically.

13 Q. How does the port generally, under your leadership,
14 balance the community interest, the highest and best use of
15 the property, with any sort of profit motivation?

16 A. It's always a challenge, but what we often do is -- it's
17 not easy to determine the value of property that we own
18 because it's often in places where there hasn't been a lot of
19 market activity.

20 So what we often do is say to the person that wants to
21 buy property from us, whether it's a house, or a small
22 commercial property, or something large like this, we say put
23 a financing proposal to give us a -- give us a financing
24 proposal. We want you, the private sector, to make money.

25 We want -- don't want to charge you so much that it is

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1 not a good transaction for you; but yet, on the other hand, we
2 cannot unjustly enrich you and just start giving property
3 away, because that is favoring the few instead of the many,
4 and where we can charge more, what we would call market value,
5 then we're able to take those proceeds and invest in our work.

6 So we're trying to -- we know we lose a lot on some
7 properties, and we're going to lose less on other properties,
8 so we rely on the financial proposals that are given to us to
9 have a conversation about reasonable profit for the private
10 sector versus what we think. You know, we're often debating
11 those two things against each other.

12 MS. GAFFNEY PAINTER: May I have just a moment, Your
13 Honor?

14 THE COURT: You may.

15 Q. Ms. Brunner, returning to your communications with
16 Mr. Sittenfeld about 435 Elm, what was your perception of
17 those communications?

18 A. That he wanted me to enter into an agreement with
19 Mr. Ndukwe, regardless of whether I thought it was a good idea
20 or not.

21 MS. GAFFNEY PAINTER: No further questions, Your
22 Honor.

23 THE COURT: Thank you. Mr. Rittgers, I'll note the
24 time is 12:20. Do you have a sense of how long your
25 cross-examination will be?

1 MR. C. MATTHEW RITTGERS: It might be best to break,
2 Your Honor, for lunch. I just don't want to hold people up.

3 THE COURT: Sure. Very good. You'll be able to
4 return after lunch?

5 THE WITNESS: Yes.

6 THE COURT: Ladies and gentlemen of the jury, I
7 think, at this point, we're going to take our lunch break.
8 We'll try to start by 1:30. It's 12:20 right now. Please be
9 back by 1:20 so we can summon you down and try and get started
10 by 1:30.

11 As I've mentioned on multiple occasions, and I'm sure
12 you're probably sick of hearing, please do not do any research
13 on this case. Please do not discuss with each other the
14 testimony or evidence that you see.

15 Please do not communicate with anyone about the case.
16 Please do not allow anyone to communicate with you about the
17 case. If anyone should attempt to, please let me know
18 immediately.

19 And please do not start to form any final opinions about
20 the facts or evidence that you've heard to date. That will
21 await all of the evidence, instruction on the law, and the
22 closing argument.

23 And with that, have a good lunch.

24 (Jury out at 12:20 p.m.)

25 THE COURT: Is there anything we need to discuss

1 before we break for lunch?

2 MS. GAFFNEY PAINTER: I don't believe so, Your Honor.

3 MR. C. MATTHEW RITTGERS: I don't think so, Your
4 Honor.

5 THE COURT: All right. Please try to be back by
6 1:15, 1:20, so if there's anything we need to talk about, we
7 can get the jury in by 1:30 and get started.

8 All right. We can break.

9 (Lunch recess.)

10 THE COURT: Is there anything we need to discuss
11 before we bring the jury in?

12 MS. GAFFNEY PAINTER: Not from the government, Your
13 Honor.

14 MR. C. MATTHEW RITTGERS: Not from the defense, Your
15 Honor.

16 THE COURT: Okay. Is the jury assembled?

17 (Jury in at 1:28 p.m.)

18 THE COURT: Ladies and gentlemen of the jury, I hope
19 you had an enjoyable lunch.

20 I think, when we left, we were getting ready for
21 Mr. Rittgers' cross-examination. Mr. Rittgers, you can
22 proceed.

23 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

24

25

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1

CROSS-EXAMINATION

2

BY MR. C. MATTHEW RITTGERS:

3

Q. Good afternoon, Mrs. Brunner.

4

A. Good afternoon.

5

Q. You and I have never talked about this case or your
testimony, correct?

7

A. Correct.

8

Q. On direct examination, when the prosecutor was asking you
some questions, I just wanted to highlight a couple things,
and correct me if I'm wrong.

11

The City of Cincinnati and the port have -- that's the
most significant partnership that the port has is with the
City of Cincinnati, correct? I know it's not a technical
partnership, but...

15

A. No. I can't say it's more important than the
relationship I have with the county.

17

Q. Okay. I thought maybe it's one of the most significant
partnerships that the port has --

19

A. Clearly, among some other --

20

Q. -- is with the city?

21

A. Clearly, one of the most significant relationships is
with the city.

23

Q. And there's no direct line that you have with someone in
particular with the city, although you do meet with people
like the economic development director and some of the

BRUNNER - CROSS

1 individual council members directly at times?

2 A. There is no direct -- I have no accountability to anybody
3 at City Hall.

4 Q. In 2019, when this property was transferred to the Port
5 Authority for a dollar, there was, to your knowledge, one
6 developer interested in redevelopment of 435 Elm, correct?

7 A. I was aware of one.

8 Q. And that was Mr. Ndukwe?

9 A. Yes.

10 Q. And I believe you went through a list of factors, when
11 you were talking on direct -- do you need water? Sorry. I
12 thought you --

13 A. Huh-uh.

14 Q. Okay. Sorry -- that you wanted to see before you could
15 approve a development. Do you recall that?

16 A. Yes.

17 Q. And one of them was reputable contractor, right?

18 A. Yes.

19 Q. One of them was financing in place?

20 A. Yes, of that, and equity.

21 Q. And equity. The third, I believe, was -- you mentioned a
22 hotel, and you mentioned that it shouldn't have just been like
23 saying a hotel. You wanted to know if there was an actual
24 flag, like what type of hotel would agree to come there?

25 A. Yes.

1 Q. Architect was mentioned, correct?

2 A. Yes.

3 Q. And you already mentioned equity, which I have later in
4 my list.

5 Were you aware about these guys named Rob and Brian?

6 A. I knew that Chin had investors. I never knew their
7 names. He never shared with me who his partners were.

8 I never knew whether the initial purchase of this note
9 that he made was just him or other people. I never knew
10 exactly what the relationship was with Mike Schiff so, no, he
11 never shared with me any of his partnerships, if you will.

12 Q. Is it -- were you ever told that he had the backing of an
13 out-of-town real estate developer named Rob, who had the
14 ability to come up with millions of dollars to invest in
15 435 Elm?

16 A. Honestly, I thought that these two out-of-town
17 individuals were investors. I was never told they were
18 developers.

19 He had other -- like this Mike Schiff from Columbus that
20 he brought in, claiming that he was a developer. But the
21 out-of-towners that I heard of, I always heard referred to as
22 investors, never as developers. Certainly, never with any --
23 I was never presented with any qualifications that they had as
24 developers, and he never represented they were to be his
25 development partners.

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1 Q. Were you ever told that Turner Construction was likely to
2 be the contractor?

3 A. I was told that by Chin, and was told by Dave Spaulding
4 of Turner that he had not made -- that Chin was
5 overrepresenting the conversations that they had had.

6 Q. Had you been told that IHG Hotels wanted to put an indigo
7 hotel in at 435 Elm?

8 A. I don't recall if he ever gave me the brand of a hotel, a
9 flag.

10 Q. And I believe you might have mentioned this, but on the
11 equity piece, you were never told that Rob and Brian had a big
12 group of out-of-town --

13 A. No, because frankly, he never --

14 Q. -- investors, for lack of --

15 A. In the pro formas that he gave me, that changed
16 dramatically, he changed the amount of equity. And it wasn't
17 that much. I mean, he was relying on tax credits, the TIF --
18 well, not really tax credits. The TIF I mentioned earlier, I
19 think he was relying on that for \$15 million.

20 But, I guess, to answer your question, the amount of
21 equity he was going to put in this changed with each of his
22 different pro formas he gave to me, and he never, ever shared
23 with me who those parties were.

24 Q. During your conversations with P.G., did you ever become
25 aware of the fact that he, P.G., and you were operating on two

1 different sets of information?

2 A. I specifically asked P.G. at one point in a text
3 whether -- Mr. Ndukwe called me and said that his investors
4 were friends of P.G.'s, and they were calling -- I can't
5 remember if they were calling P.G., I'm sorry, Mr. Sittenfeld,
6 or if he was calling them.

7 I asked him to clarify whether he was friends with these
8 investors, because that's what I was hearing from Mr. Ndukwe,
9 but I never knew what those relationships were.

10 And to your bigger question, I never had conversations
11 with Mr. Sittenfeld about the substance of what Mr. Ndukwe was
12 proposing to me. It was simply he wanted him in control, and
13 then let him go do his thing and get his whole team in place.

14 And I kept saying I have to have a plan. It all has to
15 be done before I give him control.

16 Q. Because you didn't think that there was a team in place
17 at the time?

18 A. I knew there wasn't a team in place. I went as late as
19 January to Columbus with Chin and Mike Schiff, and I was told
20 that that -- I think that was in January, I could be wrong. I
21 was told then that that was his development partner.

22 And we went up there to tour, and I figured out that,
23 really, he's not a developer, he also is an investor. He has
24 a stake in a lot of real estate investment in downtown
25 Columbus, but he wasn't the developer.

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1 So then I pushed Mike Schiff on who would the developer
2 be, and he said he would get a local development partner. And
3 to my knowledge, he approached at least two or three local
4 developers that declined to partner with him.

5 So, you know, I don't think that there was separate sets
6 of information. I think it was, A, the information was
7 changing a lot, and it was never very clear.

8 Q. On the separate sets of information, you don't know what
9 P.G. was told by Rob or Mr. Ndukwe, correct?

10 A. No. I was never a party to any conversations.

11 Q. You don't know if he was told that it was an indigo
12 hotel, you don't know if he was told there was a \$75 million
13 deal, you don't know if he was told that Turner Construction
14 was going to be the contractor for this project, correct?

15 A. No. But I know that I told him I did not have a plan
16 that was satisfactory, and that the financing was all over the
17 place.

18 Q. Okay. I believe you ended your direct talking about P.G.
19 calling you many times about 435 Elm, correct?

20 A. Yes.

21 Q. You and P.G., in 2018 and 2019, you talked on the phone
22 about various topics, correct?

23 A. Not so -- well, yes.

24 Q. And you text on occasion?

25 A. Yes. It was more on the phone than it was by text, yes.

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1 Q. Sometimes you'd email?

2 A. Probably. I don't have direct --

3 Q. But you talked on the phone more than email and text?

4 A. With him in particular, yes. I think there was more
5 phone conversation than there was written.

6 Q. And you had known P.G. for many years?

7 A. Yes.

8 Q. In fact, back in the summer of 2018, you and P.G. were
9 emailing about opportunity zone funding and planning for the
10 region. Do you recall that?

11 A. I'm sorry, we were emailing about what?

12 Q. Opportunity zone funding and planning for our region.

13 A. Oh, I don't remember the opportunity zone conversation in
14 particular, but that doesn't surprise me that we would have,
15 or -- that summer, there were a lot of conversations with a
16 lot of different people talking about that.

17 Q. All right. And that summer, you invited leaders and
18 council members to do a port tour, correct, tour industrial
19 sites?

20 A. We did tours every month or six weeks for a couple years,
21 and we invited administration and elected officials from the
22 city and the county, and a lot of other dignitaries.

23 Q. Do you recall an email that P.G. included you on, where
24 he was encouraging other council members to go on the port
25 tour because he was the only one that went?

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1 A. I recall him, after he came on our tour -- I don't know
2 if it was that social media post or an email from the council
3 members, but I remember him saying something positive about
4 the results of the tour and encouraging others to participate.

5 MR. C. MATTHEW RITTGERS: Your Honor, if I may
6 approach? This is Defendant's Exhibit 105.

7 THE COURT: You may.

8 Q. Mrs. Brunner, if you could take a look at that.

9 A. Yes. As I said, I remember he did something positive
10 after that.

11 Q. And so after looking at that document, Defendant's
12 Exhibit 105, you can now say that P.G. emailed council, and I
13 believe you were on the email, encouraging them to do that
14 tour so they can actually put their feet on the ground or eyes
15 on the port's property projects, correct?

16 A. Yes.

17 Q. There were also times in 2019 where you would email P.G.
18 about development deals on port sites, and tell him your
19 thoughts about tax abatements and CRAs, correct?

20 A. I don't remember anything specific on those subjects.

21 MR. C. MATTHEW RITTGERS: Your Honor, if I may
22 approach?

23 THE COURT: You may.

24 MR. C. MATTHEW RITTGERS: This has been previously
25 marked as Defendant's Exhibit 103.

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1 Q. Ms. Brunner, have you had a moment to review that?

2 A. Yes.

3 Q. And so this is an email, you to P.G., talking about TIF
4 funding and a CRA, correct?

5 A. Yes. It doesn't reference what project it was, so I --
6 but it's a pretty general statement, but yeah.

7 Q. It might have been the Brown field, which the old
8 brewery -- I forget which one, but the --

9 A. I don't think it would have been Hudepohl, but...

10 Q. Hudepohl, that's what I was thinking about.

11 A. I don't know.

12 Q. But the timing, this was January 2019?

13 A. Yes.

14 Q. And just so that we're clear, you are emailing P.G.
15 discussing the TIF being for 20 years, CRA for 65 percent at
16 15 years?

17 A. I can't -- so I'm emailing him, and I can't tell what's
18 at the top there, if that's -- that looks like that's him
19 emailing me.

20 Q. Oh, he forwarded this email from me to you, so...

21 A. Oh, oh, that's right. Yes. Yes, it's an email to me. I
22 don't know if it was following -- it would have been initiated
23 by something, either a phone call or an email. I'm obviously
24 answering some kind of question. I just don't recall the
25 question.

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1 Q. And you tell him that you're going to circle back with
2 him after you have a couple more council meetings, and you
3 thank him for his input and guidance, correct?

4 A. Uh-huh. Yes.

5 Q. And this was not about 435 Elm, correct?

6 A. No.

7 Q. You would, on occasion, schedule meetings with P.G.
8 proactively, and other council members, to update them on port
9 projects, correct?

10 A. Yes.

11 Q. Do you remember when Bruce Katz came to town? Who is
12 Bruce Katz?

13 A. Bruce Katz is an international author and thought leader
14 that I brought to town for three days for a series of meetings
15 and presentations, and invited a number of different elected
16 officials and business leaders and community leaders. P.G.
17 was one of those I invited for, at least, one of the sessions.

18 Q. And even for a small breakfast with you, Mr. Denning,
19 Bruce Katz, and P.G., it was just the four of you, correct?

20 A. Was it? Okay. I don't recall that being that makeup,
21 but that doesn't surprise me.

22 Q. Okay. And there were times where he would invite you to
23 meet with other civic leaders in town to collaborate and then
24 talk about the region, correct?

25 A. Yes.

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1 Q. He proactively reached out to you and someone at the
2 Regional Chamber of Commerce to help facilitate a meeting for
3 leaders all around the region, correct?

4 A. Yes.

5 Q. And there were times when P.G. would even email you when
6 he thought things were moving too slowly with the port or
7 responsiveness, correct?

8 A. I do not recall that on any kind of regular basis, other
9 than two specific projects. That was not a normal course for
10 him to say I'm moving too slowly.

11 Q. Was one of them the Mt. Airy Homeless Veterans Project?

12 A. No, that was not my project. He was asking for sites,
13 suggestions of sites for a project he was spearheading.

14 Q. And in that --

15 A. Unless you're saying he thought I wasn't replying to his
16 question fast enough?

17 Q. Yes. Do you recall that?

18 A. No. But I'm assuming that's what he's saying.

19 Q. Okay. I'll show it to you.

20 A. Because it was not our project, it was his.

21 MR. C. MATTHEW RITTGERS: Your Honor, may I approach?

22 THE COURT: You may. Thank you.

23 MR. C. MATTHEW RITTGERS: May I approach the witness?

24 THE COURT: Yes.

25 Q. Ms. Brunner, I handed you what's been marked as

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1 Defendant's Exhibit 716.

2 Let me know when you've taken a look at that.

3 A. Yes.

4 Q. There's an email from P.G. to you about his desire to go
5 look at certain site locations, and then there's another email
6 three days later, where he follows up on top of that email,
7 and you said, "Shoot, I missed this. I'll get back to you on
8 Monday"?

9 A. Yes.

10 Q. So P.G. was -- he didn't have a response email on top of
11 his own email before your response, correct?

12 A. Yes.

13 Q. And he also texted you about this. Do you recall him
14 texting you about this Sedamsville and Mt. Airy?

15 A. I know I have a text regarding, like, number of sites or
16 acres or something, yes.

17 Q. Yeah. In fact, in that email, I think it might even be
18 referenced, 8.3 acres and 2.5?

19 A. Uh-huh.

20 Q. And that's also -- P.G. would text you about that, and
21 that was -- you were aware that that was for a non-profit
22 Veterans Community Project, correct?

23 A. Yes. I would say, you know, not following up in three
24 days isn't exactly being delinquent, but...

25 Q. I'm not saying that you were. I'm just saying that P.G.

1 was just persistent with his request for a response?

2 A. In this case, yes, he was.

3 Q. And this had nothing to do with 435 Elm, correct?

4 A. No.

5 Q. And P.G. emailed you months after this email, following
6 back up, asking these folks from the Veterans Community
7 Project to come tour themselves these projects, and he was
8 just doing it to give them other options. He wasn't asking
9 for a partnership from the port, he just wanted them to see it
10 for options; is that correct?

11 A. I believe so, yes.

12 Q. Even emailing you the day after Christmas, December 26th,
13 on that project?

14 A. I do not recall.

15 Q. Is it fair to say that P.G. and you, during 2018 and
16 2019, had conversations about a lot of different topics?

17 A. I would say -- I don't know what "a lot" is. That's a --
18 I'm gonna say a hard thing to answer.

19 Q. Would you say that, in terms of the importance for the
20 region, 435 Elm was high on the list?

21 A. I think that 435 is a very important part of our downtown
22 and our Convention Center District.

23 Q. Another reason P.G. was contacting you many times, that
24 you're aware of, is because he believed -- you were aware that
25 P.G. believed you might have been treating Mr. Ndukwe

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1 differently?

2 A. He accused me of treating him differently.

3 Q. Who is "he"?

4 A. Both Mr. Ndukwe and Mr. Sittenfeld.

5 Q. Okay. And so that could be another reason why
6 Mr. Sittenfeld was reaching out to you during that time,
7 correct?

8 A. To accuse me of not treating Mr. Ndukwe fairly?

9 Q. I mean, yeah. I'm asking you if you were aware of that.

10 A. Yes. I think that was part of the theme of his phone
11 calls to me.

12 Q. In 2019, and even in 2020, it was still your preference
13 to work a development agreement with Mr. Ndukwe and not do a
14 request for proposal, correct?

15 A. No. As we moved into late 2019 and then in early '20,
16 after we went -- we went through a few -- we had some bumps in
17 the road there.

18 One of them was the challenges with Mike Schiff, and the
19 other was my concerns with Chin, and comments he was making in
20 the community accusing me of being racist.

21 Q. And P.G. was trying to mend that relationship?

22 A. I don't know if he was trying to mend it, or he was
23 trying to pressure me into overlooking the differences and
24 moving forward.

25 MR. C. MATTHEW RITTGERS: May I approach the witness,

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1 Your Honor?

2 THE COURT: You may.

3 Q. This is Defendant's Exhibit 717.

4 Ms. Brunner, can you look at the line just above your
5 signature. You were indicating to Mr. Ndukwe and Mr. Schiff
6 that working with, as you said, Chin, has always been
7 preferable, correct?

8 A. Are you saying that it says that on here somewhere?

9 Q. Right above -- you see the signature that says "Laura"?

10 A. Oh, uh-huh.

11 Q. You see the sentence right above that?

12 A. Uh-huh.

13 Q. That's what you're telling Mike Schiff and cc'ing
14 Mr. Ndukwe?

15 A. I think that's consistent with what I've been saying
16 today, that from the very beginning, from the moment I had
17 this property, the perfect world would have been to have Chin
18 be a part of a development team.

19 It would have been an opportunity for him to recover some
20 of the investment that he made, if not more than his
21 investment, and it would be great to have a significant -- a
22 black developer play a significant role in a significant
23 project.

24 But -- and that's what I'm saying 'til the end. It would
25 have been preferable, but he didn't do anything I asked him to

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1 do.

2 Q. That email was in late 2019, correct?

3 A. Yes.

4 Q. You were unaware -- in 2019, you were trying to negotiate
5 a partnership between the port and Mr. Ndukwe, correct?

6 A. It wasn't going to be a partnership. There would have
7 never been joint ownership. I'm using partnership as joint
8 ownership.

9 Q. Okay.

10 A. What we talked about from the very beginning is the
11 potential of me agreeing to lease this property to him under
12 this ground lease, and have him with a group of developers
13 who -- obviously, would have to have the equity partners there
14 too -- would do the development.

15 Q. And he had offered you, at least at one point, \$66,000
16 per year for that ground lease, correct?

17 A. Yes.

18 Q. You were unaware of any legal issues that he had with the
19 FBI during this time, correct?

20 A. I was -- well, by this time, in December, I was aware of
21 his other criminal charges.

22 Q. He wasn't charged. Are you talking about the sexual
23 assault allegations?

24 A. Yes.

25 Q. You were aware of the sexual assault allegations in

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1 September of 2019?

2 A. Yes.

3 Q. But you were unaware of any admissions that he gave the
4 prosecutors or the FBI related to federal criminal charges?

5 A. Correct.

6 Q. Would you have been spending that time and energy trying
7 to negotiate a joint ownership agreement had you been aware of
8 that?

9 A. If I had known he had approached the FB- --

10 MS. GAFFNEY PAINTER: Objection, Your Honor. It's
11 hypothetical, and she also testified earlier that there was no
12 joint ownership.

13 THE COURT: Sustained.

14 Q. 435 Elm cost the City of Cincinnati, before the transfer,
15 \$400,000 per year in maintenance costs. Did you know that?

16 A. I don't know the precise number. It was a significant
17 amount, and that excludes the delinquent real estate taxes
18 that were on the property as well.

19 Q. Which were over a million dollars?

20 A. Yes.

21 Q. So when the property gets transferred to the port, you
22 all at the port have the ability to do things with the
23 delinquent real estate taxes, correct?

24 A. We managed the county land bank, and the land bank has
25 the authority to clear delinquent taxes when it takes title to

1 property.

2 Q. But the maintenance costs, which you are now, I assume,
3 aware of, they continue to drain now the port's finances.
4 That hasn't gone away just because it was transferred to the
5 port, correct?

6 A. Correct.

7 Q. So that's to the tune of \$400,000 a year, as we sit here
8 today?

9 A. I'm not going to speculate as to the exact amount
10 because, obviously, the building's vacant now, there isn't
11 electricity. We've managed the costs down from the time we
12 took ownership, so I cannot tell you the exact amount, but
13 it's not \$400,000 a year.

14 Q. Property's blighted, you would agree with me?

15 A. Yes.

16 Q. In disrepair?

17 A. Yes.

18 Q. It is directly across the street from our Convention
19 Center?

20 A. Yes.

21 Q. So any time someone comes in from out of town to go
22 there, they see this property with paper and boarded up?

23 A. Well aware of it.

24 Q. I'm just making sure everyone else is aware. As we sit
25 here today, if we walked west, we would see all this, correct?

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1 A. Correct.

2 Q. And you're in litigation currently in Hamilton County
3 Common Pleas Court with Mr. Ndukwe's company, Kingsley, about
4 this property, 435 Elm, correct?

5 A. Yes.

6 Q. And there's a dispute over whether or not he has the air
7 rights. I believe you claim that -- go ahead.

8 A. I do not think I can answer that. I don't think I should
9 answer that question. We have a dispute as to his interest in
10 the property. I don't think I should say anything more than
11 that, due to the litigation.

12 MR. C. MATTHEW RITTGERS: Thank you. May I have one
13 minute, Your Honor?

14 THE COURT: You may.

15 MR. C. MATTHEW RITTGERS: I have no further
16 questions, Your Honor.

17 THE COURT: Thank you, Mr. Rittgers. Ms. Gaffney
18 Painter?

19 MS. GAFFNEY PAINTER: Just a brief redirect, Your
20 Honor.

21 THE COURT: Very good.

22 MS. GAFFNEY PAINTER: May I approach the podium?

23 THE COURT: You may.

24

25

1 REDIRECT EXAMINATION

2 BY MS. GAFFNEY PAINTER:

3 Q. Ms. Brunner, you were asked a series of questions about
4 Rob and Brian, and I believe you testified there was a
5 distinction between a developer versus an investor. Can you
6 please explain that distinction to us?

7 A. Yes. This morning, when I listed some of the activities
8 that a developer undertakes for property, you have to find a
9 piece of property. You have to get title to the property.

10 You have to do environmental assessments of the property.
11 You have to do a design. You have to cost it. You have to do
12 this financial pro forma and test all these assumptions. You
13 have to raise debt and equity, and hire a contractor. Those
14 are all activities of a developer that are completely separate
15 from who owns the project.

16 The developer that I just described that did all of those
17 things may not have any equity in it. They don't own it at
18 all. They just get paid a developer fee, or they might put
19 \$2 million of their money in and they own all of it.

20 Or if the equity that's required for that project is
21 \$4 million, and they only have \$2 million, then they find
22 somebody else to invest with them, and they share the
23 ownership 50/50, each putting in \$2 million.

24 So the ownership of the project, which means the share of
25 the profits in the future, and the way you split the money

1 when you sell it, that all depends on equity, who's got the
2 money in it.

3 Now, sometimes one of those partners might have a -- more
4 money personally, and so they can sign a guarantee for the
5 debt, so they get paid some for that. So there are other ways
6 in which you kind of split responsibilities and benefits, but
7 all of that, those are just equity partners.

8 You know, and nowhere in this, you know, discussion, in
9 these discussions with Mr. Sittenfeld were we talking about
10 who the developer was, and that was my concern from the very
11 beginning is who actually has the skill to do this.

12 Q. You referenced, on cross-examination, changes to the
13 pro forma. Can you give us just some examples of how
14 Mr. Ndukwe's pro forma was changing?

15 A. Yes. The first, most complete pro forma that he gave to
16 me was multiple pages, and he showed what the costs were going
17 to be, the debt, equity had already been put in there, not who
18 the parties were, so I didn't know any -- if there were any
19 commitments behind it.

20 But then the pro forma said, okay, I think it was about
21 \$88 million. This project is going to cost \$88 million.
22 We're going to sell it year nine.

23 And mister -- Kingsley, Chinedum's profit, his profit was
24 going to be \$27.6 million. So I said to him, well, if you're
25 going to make \$27.6 million when you sell this in nine years,

1 you can surely afford to pay me the \$330,000 of ground payment
2 that I'm asking for.

3 So he said, oh, hmm. That didn't go so well. He came
4 back eight days later with a pro forma that magically now said
5 that he was going to make \$4.6 million instead of
6 \$27.6 million. And then a few months later, I got one from
7 him that says he was going to make \$5.8 million.

8 So all of the numbers were changing to such a great
9 degree, I had no confidence in them.

10 Q. You were asked a series of questions on cross-examination
11 about contact you had with Mr. Sittenfeld in 2018, 2019, 2020.

12 Was the communication you had with Mr. Sittenfeld about
13 435 Elm different in kind from those communications?

14 A. Yes.

15 Q. How so?

16 A. I had -- Mr. Sittenfeld was one of the many council
17 members I had a good relationship with. And we talked. You
18 know, we cared a lot about the city. We talked a lot about
19 different things. He's a big picture thinker and cared
20 deeply, so we had a lot of very productive conversations.

21 And I will say these conversations about 435 Elm were
22 completely out of context with the rest of my communication
23 with him.

24 MS. GAFFNEY PAINTER: No further questions, Your
25 Honor.

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1 THE COURT: Thank you.

2 MR. C. MATTHEW RITTGERS: Very briefly. May I
3 approach, Your Honor?

4 THE COURT: You may.

5 MR. C. MATTHEW RITTGERS: Thank you, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. C. MATTHEW RITTGERS:

8 Q. Ms. Brunner, were you aware that Rob cut his teeth in
9 Georgia doing real estate development decades ago?

10 A. I never heard these names. Never heard of Rob until the
11 newspapers, you know, whenever this all -- this whole case
12 came out in the newspapers.

13 I did not know he -- I just knew there were investors. I
14 never knew their names. I was never told anything about them.

15 Q. In that first pro forma that you mentioned on redirect,
16 you mentioned that there was no commitment behind him in that
17 pro forma. You're referring to money, correct?

18 A. I'm saying that -- well, that he had -- it was an Excel
19 spreadsheet. It did not give any details of where the -- if
20 he had bank financing, if he had equity commitments or not.

21 Q. Equity commitments could be somebody like out-of-town
22 investors with --

23 A. Oh, yes.

24 Q. -- millions of dollars?

25 A. Yes. But he never shared that with me. He never said I

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1 have investors. He never told me. When Mike Schiff came to
2 town, you know, it was just like "my partners." I said what
3 is he doing? And he kept telling me he's a developer. And
4 I'm, like, no, he's not a developer. It sounds like he's an
5 investor.

6 So then I didn't know what these other two guys were.
7 And, honestly, I didn't know if those other two guys were
8 investors in 435, or -- because Chin was buying up multiple
9 properties in different locations. I didn't know what was
10 going on, honestly.

11 Q. In all your communications with P.G., you could tell that
12 he cared deeply about the City of Cincinnati?

13 A. Yes.

14 MR. C. MATTHEW RITTGERS: Thank you. I have no
15 further questions Your Honor.

16 MS. GAFFNEY PAINTER: No re-redirect, Your Honor.

17 THE COURT: Very good. Ma'am, you may step down.
18 Thank you.

19 (Witness excused.)

20 (Excerpt of proceedings concluded at 2:01 p.m.)

21 * * *

22 C E R T I F I C A T E

23 - - -

24 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing
25 is a correct transcript from the record of proceedings in the
above-entitled matter.

